



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Mercer Products and Manufacturing  
Company, Inc.--Request for Reconsideration  
File: B-230223.2  
Date: October 27, 1988

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### DIGEST

Protester has not been prejudiced by agency delay in product qualification process after submission on a quote for a request for quotations, where agency takes 3 weeks to advise protester of what information was needed for the product qualification process, in circumstances where there is (1) a 230-day qualification process that the protester has not successfully challenged and (2) a 270-day delivery requirement.

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### DECISION

Mercer Products and Manufacturing Company, Inc., has requested reconsideration of our decision in Mercer Products & Manufacturing Co., Inc., B-230223, June 13, 1988, 88-1 CPD ¶ 560, in which we denied the company's protest against the rejection of its quotation under request for quotations (RFQ) No. DLA700-88-X-C196, issued on November 30, 1987, by the Defense Logistics Agency (DLA) for two linear actuating cylinder pistons for use on F-18 aircraft.

We affirm our prior decision.

Mercer's quote, received by DLA on December 21, 1987, was rejected by DLA's letter of February 3, 1988, because the alternate product Mercer offered needed to be evaluated by the Navy, the user of these pistons. This required additional documentation, as well as a period in excess of 230 days to evaluate this "critical application item." These facts, coupled with a long lead time (270 days) for delivery under the RFQ and a stated critical need because of a shortage of these items in stock, prompted a DLA decision that "it would not be in the best interest of the Navy to delay the award for 230 days," pending Mercer's possible qualification with the Navy. The February 3 DLA letter also

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listed what information was needed for the product qualification process.

Mercer argued that DLA had improperly delayed review of its quotation and that the proposed 230-day period for the Navy's review of its quotation was violative of the requirement of the Defense Procurement Reform Act of 1984, 10 U.S.C. § 2319(b)(6) (Supp. IV 1986), that agencies provide prompt prequalification procedures, as well as being "violative of the statutory requirement for full and open competition."

We concluded that DLA could have been more prompt in informing Mercer by letter of February 3, 1988, that its product needed to be qualified and that more information was needed to process Mercer's application. In this regard, DLA took 3 weeks to notify Mercer of the requirements after it was advised of the alternate product approval requirements. Nevertheless, we found this 3-week delay did not prejudice Mercer, since Mercer had not successfully challenged the Navy's 230-day approval cycle nor the urgency of the RFQ requirement. We also found that Mercer was responsible for much of the delay in evaluating its quotation, since the record indicated that it did not submit drawings, specifications, or other data with its initial quotation, but only as part of its February 12 protest to our Office. Under the circumstances, we denied Mercer's protest.

In its request for reconsideration, Mercer asserts that our decision put an improper burden on Mercer to establish that the Navy's 230-day evaluation period was excessive, thereby disregarding the conclusions of our Office in Rotair Industries, Inc., B-224332.2, B-225049, Mar. 3, 1987, 87-1 CPD ¶ 238 and Pacific Sky Supply, Inc., 66 Comp. Gen. 369 (1987), 87-1 CPD ¶ 358, and that our decision was erroneous as a matter of fact since Mercer did submit adequate technical data with its quotation.

As indicated in our prior decision, we find this case clearly distinguishable from Rotair and Pacific Sky. In Rotair we sustained the protest in part because the agency, due to lack of diligence, had not acted on some source approval requests of Rotair for more than 2 years after their submission. In Pacific Sky, we sustained the protest because the agency made no effort for 3-1/2 months to request the data from the primary manufacturer that was needed to evaluate the protester's part and thus did not promptly send the data package to the Navy and the Air Force for final evaluation. In both Rotair and Pacific Sky, the facts of unreasonable delay by the procuring agency were

evident. By contrast, in this case the facts of such extreme unreasonable delay are not present. Although DLA did take 3 weeks to inform Mercer of what information was needed for the product qualification process, this period is insignificant in comparison to (1) the time periods of delay involved in the cited cases and (2) the 230-day evaluation period needed by the Navy. Thus, we do not find Mercer was prejudiced by this delay.

Mercer still does not believe the 230-day technical evaluation period is reasonable. Its only evidence supporting this contention is an Air Force pamphlet, discussed in our prior decision, that states that the Air Force's Source Development Office processes some requests for qualifications in as little as 18 days. DLA points out that this Air Force "processing time" involves the providing of assistance to companies in the development of data packages, which does not involve the technical evaluation of the data packages. Consequently, this 18-day period is not comparable to the 230-day period of technical evaluation required by the Navy in this case.

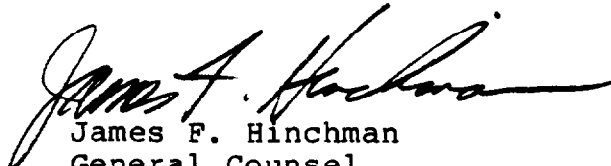
As to the Navy's 230-day period for evaluating offers, DLA informs us that the period consists of two separate periods of 60 days and 170 days each. Sixty days is required by the Navy's Aviation Supply Office to do a preliminary screening to determine whether all required information is present in the technical data package. Once that 60-day period is successfully completed, the request is forwarded to the Naval Air Systems Command for engineering review which is estimated to take 170 days.

Mercer argues that this 230-day period cannot be allowed to stand under Rotair. However, that case does not establish any fixed period of time within which user agencies must process alternate product approval requests; rather, we concluded that the agency's 2-year approval period in those circumstances was unreasonable. As we stated in Rotair, a protester's mere allegation that a user agency's procedure for approving alternate products takes more time than the protester believes is necessary is not a showing that the procedure is unreasonable. In our view, Mercer's allegation that the Navy's projected 230-day period is unreasonable is not a showing that this period is unreasonable in fact.

Mercer also argues that our decision erred in stating that Mercer did not submit technical data with its initial quotation. We so concluded because DLA's report on the protest indicated this was the case. DLA now informs us that Mercer did submit a technical data package with its initial quotation, but the data was found by DLA to be

insufficient for submission to the Navy for technical review. The February 3 DLA letter to Mercer informed it of the data requirement, which DLA confirmed by letter of March 15, 1988.<sup>1/</sup> Mercer argues that DLA reasonably should have obtained this additional data from a reasonable reading of Mercer's data package and protest and forwarded Mercer's application to the Navy. However, even if DLA should have forwarded Mercer's application to the Navy for evaluation at that time, the Navy's 230-day evaluation period, in itself, would reasonably have precluded award to Mercer under the RFQ delivery schedule. Therefore, since Mercer has not successfully challenged the need for the 230-day technical evaluation period, the erroneous finding in our prior decision that Mercer had not submitted data with its initial quotation does not change our conclusion that Mercer's quotation could not be considered under the RFQ.

Based on the foregoing, we affirm our prior decision denying Mercer's protest. However, we have been recently advised that DLA does not plan on making award under the RFQ and is seeking to qualify alternate products. Consequently, by separate letter, we have recommended that DLA forward Mercer's alternate product approval request to the Navy for processing.

  
James F. Hinchman  
General Counsel

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<sup>1/</sup> DLA states that Mercer still has not furnished the requested data so it still has not forwarded Mercer's request to the Navy.